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SUMMARY OF DOCTORAL DISSERTATION**"Taking steps to apply enforcement measures
as a creditor's duty in administrative enforcement proceedings"**

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Undertaking actions aimed at the application of enforcement measures, which are an expression of the creditor's duty in administrative enforcement proceedings, has not yet been comprehensively elaborated. Although the legal position of the creditor as a co-manager of enforcement proceedings is the subject of interest of the doctrine of enforcement proceedings¹, the analyses so far are either fragmentary (e.g. limited by the form of a textbook²), take the form of a commentary to the Enforcement Act³, or present a broad approach to the legal position of the creditor⁴ in administrative enforcement proceedings. The same is the case with studies of one of the most important principles of administrative enforcement proceedings - the principle of the obligation to initiate and conduct it (also known as the principle of conducting enforcement *ex officio*), expressed in the provision of Article 6 § 1 of the Act of 17 June 1966 on Enforcement Proceedings in Administration⁵ (hereinafter: the Enforcement Act), which stipulates that "in the event of the debtor's evasion of his/her obligation, the creditor should take actions aimed to apply enforcement measures".

This justifies the scientific reflection on the key role of the creditor in the implementation of this principle of law. Therefore, the considerations are devoted to the analysis of the public-law creditor's duty to realise the principle regulated in Article 6 § 1 of the Enforcement Act. The problem that arises in this context is complex, as the legal status of the

¹ The phrase 'science of enforcement proceedings' is used, inter alia, by P. Przybysz, *Podmioty postępowania egzekucyjnego w administracji*, [in:] *Administracyjne postępowanie egzekucyjne i zabezpieczające*, ed. D.R. Kijowski, v. 3, part 1, *Zagadnienia ogólne*, Warszawa 2020, p. 351.

² *Administracyjne postępowanie egzekucyjne*, ed. M. Masternak, P. Rączka, T. Jędrzejewski, Toruń 2002

³ See, inter alia, P. Przybysz, *Postępowanie egzekucyjne w administracji. Komentarz*, Warszawa 2021; *Postępowanie egzekucyjne w administracji. Komentarz*, ed. R. Hauser, W. Piątek, Warszawa 2021; D. R. Kijowski, *Ustawa o postępowaniu egzekucyjnym w administracji. Komentarz*, Warszawa 2015.

⁴ P. Świerczyński, *Pozycja prawna wierzyciela w egzekwowaniu obowiązków administracyjnoprawnych*, Warszawa 2021.

⁵ Consolidated text: Official Journal of Laws "Dziennik Ustaw" 2022, item 479.

creditor in compulsory proceedings is not uniform, which manifests itself, *inter alia*, in the fact that it may act as a separate entity from the enforcement authority or be identical with it. In addition, the amendments to the Enforcement Act undertaken in recent years have changed the way in which the creditor is obliged to perform his/her duty. An example of this is the introduction of the so-called soft recovery referred to in Article 6 § 1b of the Enforcement Act, which determines that priority is given to persuading the obliged party to voluntarily fulfil his or her obligation. Thus, the role of the creditor has changed - from an entity that has so far been coercing to an active participant of the proceedings encouraging the fulfilment of the obligation. Among other things, such solutions justify the need for a new approach to this issue.

The main objective of the undertaken research is an attempt to determine the legal position of the creditor, shaped by the content of the principle of execution *ex officio*. Due to the fact that the indicated principle refers only to the Polish legal order, its implementation from the perspective of a creditor who is a member state of the European Union other than the Republic of Poland or a third country was excluded from the area of research. Admittedly, in accordance with Article 5 § 2 of the Enforcement Act, the indicated entities may demand the fulfilment of the obligations referred to in Article 2 § 1 points 8(a-f) and 9 of the Act, by way of administrative enforcement based on Polish regulations, but the Enforcement Act does not impose the obligation referred to in Article 6 § 1 on them. The second limitation of the research area is the restriction of the duties incumbent on the creditor in administrative enforcement proceedings to only those which aim to realise the principle of enforcement *ex officio*. Thus, the issue of the settlement of costs between the creditor and the enforcement authority, for example, remains outside the scope of interest.

The research on the creditor's duty to take actions aimed at the application of enforcement measures has been based primarily on legal regulations of a statutory rank, with particular emphasis on the Act on Enforcement Proceedings in Administration, but also on regulations of an executive nature. The provisions of the Constitution of the Republic of Poland of 2 April 1997⁶ (hereinafter referred to as the Constitution of the Republic of Poland or the Basic Law) have also been taken into account. The considerations have been supplemented with a review of the jurisprudence of administrative courts, which reflects the practical dimension of the interpretation of the provisions regulating the duty within the meaning of Article 6 § 1 of the Enforcement Act.

⁶ Official Journal of Laws "Dziennik Ustaw" 1997, No. 78, item 946, with later amendments.

Within the aim, subject, and area of research thus defined, an attempt has been made to verify the main research thesis, which relates to the claim that the duty within the meaning of Article 6 § 1 of the Enforcement Act, which is the result of the existence of the principle of *ex officio* enforcement, determines the legal position of the creditor in administrative enforcement proceedings. In order to prove the above, it is necessary to use the following subsidiary theses: (1) the creditor's duty falls within the scope of administrative enforcement proceedings, with the proviso that it also includes actions taken in the course of administrative safeguard proceedings; (2) the creditor has a duty under Article 6 § 1 of the Enforcement Act, if he/she is a creditor within the meaning of Article 1a p. 13 in conjunction with Article 5 § 1 of the Enforcement Act; (3) the phrase "the creditor should" means that the legislator has provided him/her with competence understood as the obligation to fulfil the duty referred to in Article 6 § 1 of the Enforcement Act; (4) the substratum of the principle of conducting enforcement *ex officio* is the creditor's duty referred to in Article 6 § 1 of the Enforcement Act; (5) the implementation of the principle of *ex officio* enforcement is based on the general principles of administrative enforcement proceedings; (6) the creditor's obligation is realised prior to the initiation of the administrative enforcement proceedings and exists as long as the obligation of the debtor is fulfilled; (7) the implementation of the creditor's obligation does not only include taking actions aimed at applying enforcement measures, which may be indicated by the literal wording of Article 6 § 1 of the Enforcement Act, but also watching over the enforcement of the debtor's obligations; (8) this duty is not absolute, as it is subject to legally prescribed limitations; (9) the non-performance or improper performance of the obligation resulting from Article 6 § 1 of the Enforcement Act gives rise to legally significant consequences.

The consequence of the choice of the topic of the dissertation is the use of specific research methods appropriate for legal sciences. A dogmatic research method was used as the dominant one, which manifests itself in a linguistic and logical analysis of the normative material. Indeed, the exegesis carried out consisted primarily of the study of normative acts, a detailed list of which can be found at the end of the dissertation. The application of the dogmatic method required the reconstruction of legal norms by means of linguistic, systemic, and purposive interpretation. As a subsidiary measure, the theoretical-legal method was used, as well as the method of analysis and criticism with reference to the doctrinal positions contained in the literature on the subject. Subsidiarily, the empirical method was also applied in the scope of the analysis of the practice of law application, resulting from the jurisprudence of administrative courts, the Supreme Court, and the Constitutional Tribunal. A specific complement to the conducted explication was the use of the historical-legal method in order to

show the solutions of the creditor's participation in the implementation of the principle of compulsory initiation and conduct of administrative enforcement proceedings under the rule of legal provisions that are no longer in force. The indicated method made it possible to understand the current legal solutions by using the knowledge of the evolution of the studied issue.

The dissertation consists of an introduction, six substantive chapters, and conclusions. The first chapter presents the general issues, which provide an introduction to the research topic by showing the procedural context in which the creditor performs his/her duty. For this purpose, it was necessary to define the relationship between the concepts: "administrative enforcement", "administrative enforcement proceedings", "enforcement proceedings in administration" and "administrative enforcement procedure". The starting point for further considerations was the definition of the creditor's legal position in administrative enforcement proceedings. Here, the concept of 'creditor' was clarified and it was indicated which legal entities can fulfil this role, as well as how the relationship between the creditor and other participants in the proceedings was shaped. The differences between a creditor in the context of the Enforcement Act and a creditor under civil law are also outlined.

The second chapter covers the findings concerning the semantic and systemic definition of the creditor's duty within the meaning of Article 6 § 1 of the Enforcement Act. For this purpose, the meaning of the expressions: "duty" and "should" in common language and also from the perspective of legal theory has been presented. It is also pointed out how the phrase "should" is used in legal and juridical language as well as the creditor's duty is considered from the perspective of the competence of a public administration body.

The analysis carried out in the third chapter concerns the location of the duty within the meaning of Article 6 § 1 of the Enforcement Act, which is the result of the existence of the principle of carrying out enforcement *ex officio*, in the area of principles of law. The research was conducted with particular regard to constitutional principles, general principles of administrative procedure and general principles of administrative enforcement proceedings.

The fourth chapter has been devoted to the legal conditions leading to the actualisation of the creditor's duty and the creditor's actions implementing the duty in question, which are taken both before and during the pending enforcement proceedings, as well as in the course of safeguard proceedings.

In the fifth chapter, an attempt is made to define the limits of the creditor's duty as set out by law and to find them both in the compulsory law and substantive provisions.

The sixth chapter, closing the catalogue of key issues of the dissertation, deals with the complex subject of legal consequences of non-performance or improper performance of duties within the meaning of Article 6 § 1 of the Enforcement Act.